

# **EXHIBIT 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

CISCO SYSTEMS, INC. AND  
CISCO TECHNOLOGY, INC.

Plaintiffs,

v.

HUAWEI TECHNOLOGIES CO., LTD.,  
HUAWEI AMERICA, INC. AND  
FUTUREWEI TECHNOLOGIES, INC.,

Defendants.

CIVIL ACTION NO. 2:03-CV-027

DECLARATION OF CHARLES  
GIANCARLO IN SUPPORT OF  
PLAINTIFF CISCO'S MOTION FOR  
PRELIMINARY INJUNCTION

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SUBJECT TO PROTECTIVE ORDER IN CIVIL ACTION NO. 2:03-CV-027

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TEXAS – MARSHALL DIVISION

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**DECLARATION OF CHARLES  
GIANCARLO IN SUPPORT OF  
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PRELIMINARY INJUNCTION**

I, Charles Giancarlo, declare as follows:

1. I make this declaration in support of Cisco Systems, Inc.'s and Cisco Technology, Inc.'s (collectively "Cisco") Motion for Preliminary Injunction against Huawei Technologies, Co., Ltd., Huawei America, Inc., and Futurewei Technologies, Inc. I have personal knowledge of the facts set forth in this declaration and, if called to testify as a witness, could and would competently testify to them under oath.

2. I am the Senior Vice President and General Manager of Technology Development at Cisco. I am also head of Cisco's Carrier Systems Group and Switching, Voice & Storage Group. I have been employed by Cisco since December 1994. Throughout my career at Cisco, I have been involved in the development of leading-edge high volume networking products, including Cisco routers. I have also been directly involved in the marketing of Cisco's products and in promoting Cisco's brand awareness.

3. Throughout my career at Cisco, I have also been involved in the design, development, and management associated with the proprietary computer operating system that

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runs on Cisco's routers (as well as other Cisco internetworking devices) called the Cisco Internetwork Operating System (IOS).

**A. Cisco's Router Technology Is Very Valuable**

4. Cisco is a worldwide leader in the development of networking products for the Internet, including network routers. A router is a device that enables data and information to be transported from one network to another – locally, regionally, and internationally. Routers are the backbone of Internet traffic, routing packets of data as they are transported from sender to recipient. For example, the transmission of an e-mail message from Dallas, Texas to Hong Kong will pass through multiple routers as the packets of information comprising the messages pass from one network to another.

5. The science of routing packets of data through networks is complex and challenging and requires tremendous innovation and technological development to assure that messages are sent quickly and securely and arrive at their intended destination. As a pioneer in this area, Cisco has achieved renown for the technological superiority, convenience, and security of its routers, which in turn have facilitated the amazing growth of computer networks and the Internet.

6. Cisco came to its position of technological leadership by hard work and substantial investments in research and development. As a result of its endeavors, Cisco has created valuable intellectual property in the form of patents, copyrights, trademarks, and trade secrets that protect the technology it has created.

7. One of the core technologies contained in every Cisco router is the Cisco IOS, a proprietary computer program that manages the routing of packets through the router. IOS is the product of over 15 years of hard work and hundreds of millions of dollars in research and development investment.

8. A key component of Cisco's copyrighted IOS programs is Cisco's copyrighted "Command Line Interface" ("CLI"). The CLI is the interface by which users communicate with Cisco routers. It consists of an elaborate structure of textual commands that allow an

Information Technology (“IT”) manager to configure and manage the router. Each command corresponds to a particular function that can be performed by the router. When a command is entered by the human operator, the router performs the function associated with that particular command.

**B. Huawei Has Entered the U.S. Market With Infringing Routers, Software and Manuals**

9. One of Cisco’s competitors in the internetworking space is Huawei Technologies, Co., Ltd., (“Huawei”), headquartered in the People’s Republic of China. Huawei is a multi-billion dollar company that conducts business throughout the world in the manufacture and sale of network communications equipment.

10. Huawei manufactures and sells a line of network routers, known as “Quidway” routers, that are designed to compete with Cisco’s network routers. Huawei recently introduced its line of Quidway routers for sale in the United States. Huawei has promoted its Quidway Routers as interchangeable with Cisco routers, that is, providing compatible functionality. Huawei promotes its Quidway routers as substitutes for Cisco routers without any loss of functionality, performance, or security. Huawei even adopted Cisco’s product numbering system for its Quidway routers to convey the point that a Quidway router is being offered as a “Cisco clone.” The computer software that operates on Huawei’s routers, known as “VRP,” could be downloaded in the U.S. via the Huawei website. User manual documentation for VRP and the user interface it implements was also available in the U.S. via Huawei’s website.

11. As detailed in Cisco’s complaint, Huawei has engaged in wholesale theft and copying of Cisco’s intellectual property to develop its Quidway routers. According to Cisco’s allegations, that theft includes the adoption of Cisco’s patented processes, the unlawful access to and copying of Cisco’s proprietary IOS source code, the copying of Cisco’s CLI and the copying of Cisco’s copyrighted user manuals. The overwhelming evidence of this theft is discussed in more detail in the other declarations submitted by Cisco in support of its Motion for Preliminary Injunction.

**C. Huawei's Unlawful Copying And Infringement Threatens Cisco With Substantial Irreparable Harm**

12. Huawei's unlawful copying of Cisco's copyrighted materials, including the IOS code, the CLI and the user manuals, will cause Cisco substantial irreparable injury if it is not enjoined by the Court. Cisco's proprietary IOS is one of the company's most valuable assets and a critical component of Cisco's business. The same holds true for the CLI user interface implemented by the IOS. This interface, which is unique to Cisco, has been developed over many years through the expenditure by Cisco of hundreds of millions of dollars. Cisco has also expended considerable effort and resources in training its customers on the CLI interface. One aspect of this effort is the extensive user documentation Cisco has prepared to describe IOS and the CLI and educate its customers on their use.

13. Huawei's unlawful copying of the IOS, CLI and manuals will cause Cisco substantial irreparable injury. First, Cisco loses the exclusivity and control to which it is entitled under the copyright laws. By copying the IOS, CLI and user manuals, Huawei has unlawfully deprived Cisco of the exclusive use of its copyrighted and proprietary materials. Consequently, Huawei can unfairly capitalize on the enormous customer goodwill and loyalty that Cisco has developed with its customer base through the many years of development and refinement of the IOS, the user interface and associated manuals.

14. Second, there is compelling evidence that Huawei unlawfully gained access and used the source code from IOS, which Cisco maintains as a trade secret. If Huawei is allowed to continue to possess copies of Cisco's source code, it will be in a position to continue to use or disclose this source code to others, which would cause even more injury to Cisco. The use and disclosure of Cisco's confidential source code undermines the competitive advantage that Cisco has by keeping its source code confidential.

15. Third, Cisco will be irreparably injured because Huawei, a competing seller of internetworking equipment, will be able to enjoy a "free ride" on Cisco's work, innovation and customer development. Because it chose copying over independent development, Huawei has avoided the substantial investments made by Cisco (and by other competitors that have not stolen



Cisco's intellectual property) in developing an operating system and user interface. Huawei also has avoided the effort and expense in training customers on the use of an operating system and user interface that Cisco and other internetworking vendors have faced. Huawei now can simply ride on Cisco's coat tails, and approach Cisco's customers with claims of Cisco functionality. Huawei's unlawful conduct, therefore, gives it the opportunity to literally steal business opportunities away from Cisco by using Cisco's technology and intellectual property. Cisco Customers approached by Huawei may not understand that the Quidway routers' mimicry of Cisco's advanced features and functionality are made possible by the infringement of Cisco's intellectual property; those customers may then shift their allegiance from Cisco without any awareness of Huawei's unlawful acts. Once customers are lost, it is always difficult to recover them. Huawei's marketing pitch to prospective customers not only threatens Cisco with a substantial loss of market share, but threatens the valuable customer goodwill Cisco has developed over many years of business.

16. Finally, Huawei's theft of Cisco's technology means that Cisco must now compete in the marketplace directly against its own technology. Unless Huawei is enjoined, Cisco is deprived of the right to enjoy the full benefit of its proprietary technology.

**D. Conclusion**

17. Cisco has expended a great deal of time, money, and resources in the creation of its proprietary IOS, CLI, and user manuals. By choosing to disregard Cisco's intellectual property rights, Huawei has avoided the intellectually challenging process of developing its own intellectual property. If not enjoined, Huawei's actions will render the protections Cisco has sought through the copyright laws meaningless. Huawei actions also threaten to erode Cisco's relations with its customers and deprive Cisco of its hard-earned goodwill. As such, Huawei's actions threaten Cisco with substantial irreparable harm.

Feb-03-03 03:57pm From-CISCO SYSTEMS

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 3rd day of February, 2003 at San Jose, California.

  
Charles Giancarlo

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